

NO. 2005-705B

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BARBARA DUNCAN, DISTRICT CLERK
Deputy

THE STATE OF TEXAS,
Plaintiff

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IN THE DISTRICT COURT OF

GREGG COUNTY, TEXAS

V.

JOSUE AVILA and ROBERT KOLK,
d/b/a STATUS SOCIAL SERVICES,
Defendants.

124 JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL VERIFIED PETITION AND APPLICATION FOR
EX PARTE TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION,
PERMANENT INJUNCTION AND ASSET FREEZE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the STATE OF TEXAS, Plaintiff, acting by and through Attorney General of Texas GREG ABBOTT (referred to herein as the "Attorney General"), on behalf of the State of Texas, and on behalf of the interest of the general public of the State of Texas, and complains of JOSUE AVILA and ROBERT KOLK d/b/a STATUS SOCIAL SERVICES. The Attorney General would respectfully show the Court as follows:

DISCOVERY CONTROL PLAN

1. Discovery shall be conducted under Level 2 of rule 190.3 of the Texas Rules of Civil Procedure.

JURISDICTION

2. This action is brought by Attorney General Greg Abbott through his Consumer Protection and Public Health Division in the name of the STATE OF TEXAS under the authority granted to him

pursuant to §17.47 of the Texas Deceptive Trade Practices–Consumer Protection Act, TEX. BUS. & COM. CODE § 17.41 *et seq.*, (“DTPA”), permitting the Consumer Protection and Public Health Division of the Attorney General’s office to bring an action to restrain, by temporary restraining order, temporary injunction, or permanent injunction the use of any method, act or practice declared to be unlawful by TEX. BUS. & COM. CODE § 17.46, where such proceedings are in the public interest.

3. The Attorney General files this suit against Defendants on the grounds that:

A. Defendants have engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined herein and as declared unlawful pursuant to the Texas Deceptive Trade Practices--Consumer Protection Act (referred to herein sometimes as the “DTPA”), TEX. BUS. & COM. CODE § 17.41 *et seq.*;

B. This suit is brought against Defendants for injunctive relief, actual damages, restitution, civil fines and penalties, costs, and attorney’s fees as a result of the violations of the DTPA.

PARTY DEFENDANT

4. Defendant Josue Avila is an individual residing in Kilgore, Gregg County, Texas and is doing business in the State of Texas under his own name and the name of *Status Social Services*. Defendant may be served with citation and process at his place of business and at 1312A N. Longview St., Suite 100, Kilgore, Texas, 75663 or wherever he may be found..

Defendant Robert Kolk is an individual residing in Kilgore, Gregg County, Texas and is doing business in the State of Texas under his own name and the name of *Status Social Services*.

Defendant may be served with citation and process at his place of business and at 1312A N. Longview St., Suite 100, Kilgore, Texas, 75663 or wherever he may be found.

VENUE

5. Venue of this suit lies in Gregg County, Texas for the following reasons:

A. Under the DTPA § 17.47(b), venue is proper because Defendants have done business in Gregg County, Texas; and

B. Under the DTPA § 17.47(b), venue is proper because many of the allegations and transactions complained of herein occurred in Gregg County, Texas;

C. Under the DTPA § 17.56, venue is proper because the Defendants have done business in Gregg County and all or part of the actions arose in Gregg County. Gregg County, Texas is the county in which the Defendants, or an authorized agent of the Defendants, solicited the transactions made the subject of this action. *See also* TEX. CIV. PRACT. & REM. CODE ANN. § 15.002 (a)(1)-(3).

ACTS OF AGENTS

6. Whenever in this petition it is alleged that Defendants did any act or thing, it is meant that:

A. Defendants performed or participated in the act, or

B. That the Defendants' officers, trustees, employees, agents, representatives, or successors, performed or participated in the act on behalf of and under the authority of the Defendants.

PUBLIC INTEREST

7. Because Plaintiff State of Texas has reason to believe that the Defendants have engaged in, and will continue to engage in the unlawful practices set forth below, Plaintiff State of Texas has reason to believe Defendants have caused and will cause immediate, irreparable injury, loss and

damage to the State of Texas, and will also cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State. Therefore, the Consumer Protection and Public Health Division of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

TRADE AND COMMERCE

8. Defendants have at all times described herein, engaged in conduct constituting “trade” and “commerce,” as those terms are defined in §17.45(6) of the DTPA.

NOTICE BEFORE SUIT NOT GIVEN

9. Plaintiff did not inform Defendants herein at least seven (7) days before instituting this action of the alleged unlawful conduct of which complaint is now made, pursuant to DTPA § 17.47(a), for the reason that Plaintiff is of the opinion that there is good cause to believe that such an emergency exists that immediate and irreparable injury, loss or damage would occur as a result of such delay in obtaining a temporary restraining order, and that the Defendants would evade service of process, destroy relevant records and secrete assets if prior notice of this suit were given.

SPECIFIC FACTUAL ALLEGATIONS

10. Defendants Josue Avila and Robert Kolk operate a business known as Status Social Services in Gregg County, Texas. (Exhibit “A”) Status Social Services provides immigration assistance services. (Exhibits “C,” “D,” “E,” “F,” “G,” “H”)

11. Defendants provide counseling regarding U.S. immigration laws and procedures, for a fee. (Exhibits “D,” “E,” “F,” “G”) Defendants target and solicit persons, primarily from the Republic of Mexico, attempting to immigrate and/or obtain residency in the U.S. as well as the friends and family

members of such persons. (Exhibits “D,” “E,” “F,” “G,” “H”)

12. Defendants advertise to consumers that they are qualified to prepare all of their applications, forms and other pertinent documentation as required by the immigration laws of this country. (Exhibits “D,” “E,” “F,” “G”) Defendants fail, however, to inform consumers that they are not authorized or qualified to provide such services. (Exhibits “D” “E,” “F,” “G,” “H”)

13. To represent consumers on immigration matters legally, one must be a licensed attorney, an appropriately supervised law student, or a person accredited by the Board of Immigration Appeals. 8 C.F.R. § 292. Defendants are not attorneys or law students and are not accredited by the Board of Immigration Appeals to represent persons in a proceeding relating to immigration to the U.S., or obtaining citizenship or other related matter. (Exhibit “C”) Defendants are also not qualified under 8 C.F.R. §292 to represent consumers because they receive remuneration from consumers on immigration matters while having no pre-existing relationship or connection with such persons entitled to the representation. Defendants have failed to obtain permission from The Board of Immigration Appeals to act as the representative of said consumers. (Exhibit “C”)

14. In addition, Defendants provide legal advice and prepare visa applications and other legal documentation for consumers, for a fee. (Exhibit “D,” “E”) The Defendants do not, and have not possessed the certification, license, or other qualifications necessary to perform such services. (Exhibit “C”)

15. Defendants are not licensed by the State Bar of Texas to practice as attorneys in the State of Texas, nor have they at all relevant times worked under the direct daily supervision of a licensed attorney. (Exhibit “C”)

16. Defendants' failure to disclose their lack of authority and accreditation is intended to induce consumers to enter into transactions which they would not have entered into if the information had been disclosed to them.

17. Defendants publish a newsletter, called "The Status Report Newsletter," which purports to report on important issues involving immigration. This letter gives advice and counsel on immigration matters. (Exhibits "D," "E")

18. Defendants advertise their services on Spanish radio, representing that Status Social Services is a non-profit organization. (Exhibits "F," "G") In reality, organization's non-profit status has expired. (Exhibit "C") In addition, in the radio advertisement Defendants represent themselves as "social processing agents," which implies an authorization or certification that they do not have. (Exhibits "C," "F," "G")

19. Defendants claim on their business cards to be "Social Processing Agents," which implies an authorization or certification that they do not have. (Exhibit "C," "H")

20. Defendants are both notaries, but accept remuneration for filling out immigration paperwork for others. (Exhibit "C")

VIOLATIONS OF THE DTPA

22. The State has reason to believe that Defendants have engaged in, and will continue to engage in false, misleading, and deceptive acts and practices unless restrained by this Court from doing so.

23. Defendants, in the course and conduct of trade and commerce, have directly and indirectly engaged in false, misleading and deceptive acts and practices declared to be unlawful by the

DTPA, to wit:

A. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of 17.46(b)(2), by representing that Defendants' services possess the certification or qualifications necessary to counsel persons regarding their rights under U.S. immigration laws or to represent them in immigration matters when Defendants do not have such qualification or certification;

B. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another, in violation of 17.46(b)(3), by representing that Defendants possess the certification or qualifications necessary to counsel persons regarding their rights under U.S. immigration laws or to represent them in immigration matters when Defendants do not have such qualification or certification;

C. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not have, in violation of 17.46(b)(5), by representing that Defendants' services possess the certification or qualifications necessary to counsel persons regarding their rights under U.S. immigration laws or to represent them in immigration matters when Defendants do not have such qualification or certification;

D. Representing that services are of a particular standard, quality, or grade if they are of another, in violation of 17.46(b)(7), by calling themselves "Social Processing Agents" and leading consumers to believe that Defendants are qualified as experts in immigration services;

E. Representing that services are of a particular standard, quality, or grade if they are of

another, in violation of 17.46(b)(7), by claiming that Status Social Services is a non-profit organization and thereby leading consumers to believe that Defendants are offering a service to the public that is not motivated by financial gain;

F. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of 17.46(b)(12), by telling consumers that Defendants will provide representation or immigration counseling when Defendants are prohibited by law from doing so.

G. Failing to disclose information concerning services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, in violation of 17.46(b)(24), by failing to disclose to consumers that Defendants are not qualified to counsel them regarding their rights under U.S. immigration laws or represent them in immigration matters with the intention of inducing consumers into transactions which they would not have entered had this information been disclosed.

24. Defendants solicit and accept compensation to prepare documents for or otherwise represent the interests of another in proceedings relating to immigration to the United States. Such behavior violates:

TEX. GOV. CODE §406.017 (a)(2) prohibits a notary public from soliciting or accepting compensation for preparing documents or otherwise representing the interests of another in any judicial or administrative proceeding, including an immigration proceeding.

TEX. GOV. CODE §406.017 (f) provides that failure to comply with this section is, in addition to any other applicable law of this state, a deceptive trade practice actionable under the DTPA.

25. By means of the foregoing unlawful acts and practices, Defendants have acquired money or other property from identifiable persons to whom such money or property should be restored, or who in the alternative are entitled to an award of damages.

DISGORGEMENT

26. All of the Defendants' assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendants to retain, including all ill-gotten gains and benefits or profits that result from Defendants putting fraudulently converted property to a profitable use. Defendants should be ordered to disgorge all monies fraudulently taken from individuals and businesses together with all of the proceeds, profits, income, interest and accessions thereto. Such disgorgement should be for the benefit of victimized consumers and the State of Texas.

REPATRIATION OF ASSETS

27. After due notice and a hearing, the court should order that all of the Defendants' assets situated outside the jurisdiction of this Court be deposited or repatriated into an appropriate financial institution within the jurisdiction of this Court.

REQUEST FOR FINDINGS OF ACTUAL FRAUD AND FALSE REPRESENTATION

28. The Court should make findings at the conclusion of this case that the Defendants engaged in actual fraud and false representations in that Defendants have made repeated and materially false representations to the public concerning the issues of immigration and the ability of Defendants to represent and/or assist consumers in immigration documentation and proceedings, which was known to be false when made. Such false representations were made with the

intention that they be acted upon by the parties to whom the misrepresentations were made. Reliance upon these false representations has resulted in injury to numerous consumers in the State of Texas, and violates laws enacted by the State of Texas to protect the legal profession and citizens from non-licensed individuals practicing law.

NECESSITY OF IMMEDIATE RELIEF TO PRESERVE DEFENDANTS' ASSETS

29. Plaintiff requests immediate relief by way of a Temporary Restraining Order and Temporary Injunction to preserve and protect the Defendants' assets from dissipation so that the many victims of Defendants' actions can receive the restitution to which they are entitled. The Defendants' receive sums of money for services proffered which Defendants are not authorized to provide. Thus, the money collected from consumers by Defendants constitutes contraband which should be returned to its rightful owners. The **assets** of the Defendants are subject to dissipation and secretion and therefore should be **frozen** pending final trial so restitution can be made, and full and final relief can be awarded at the resolution of this litigation.

TRIAL BY JURY

30. Plaintiff herein requests a jury trial and tenders the jury fee to the Gregg County District Clerk's office pursuant to TEX. R. CIV. P. 216 and TEX. GOVT. CODE ANN. §51.604.

APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, PERMANENT INJUNCTION AND ASSET FREEZE

31. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated and will continue to violate the law as alleged in this Petition. Unless immediately restrained by this Honorable court, the Defendants will continue to violate the laws

of the State of Texas and cause immediate, irreparable injury, loss and damage to the State of Texas and to the general public. The interests of the State of Texas and the public require an Ex Parte Asset Freeze to preserve monies for consumer restitution. Therefore, Plaintiff requests an Ex Parte Temporary Restraining Order, Temporary Injunction, Permanent Injunction and Asset Freeze as indicated below.

PRAYER

32. WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that before notice and hearing a TEMPORARY RESTRAINING ORDER be issued; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, Defendants' successors, assigns, officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendants from engaging in the following acts or practices:

- A. Transferring, concealing, destroying or removing from the jurisdiction of this Court any books, records, documents, invoices, or other written materials relating to Defendants' business which are in Defendants' possession, custody, or control except in response to further orders or subpoenas in this cause;
- B. Transferring, spending, hypothecating, concealing, encumbering, depleting, modifying, dissipating, distributing, or removing from the jurisdiction of this Court any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal or mixed,

wherever situated, belonging to or owned by, in possession of, or claimed by Defendants;

- C. Giving, providing, or offering advice and counsel to any person regarding U.S. immigration laws, rights, privileges, or documents, until such time as Defendants either become licensed attorneys, or are accredited by the U.S. Board of Immigration Appeals pursuant to 8 C.F.R. § 292;
- D. Representing to any person, expressly or by implication, that Defendants can or will represent the interest of another in a judicial or administrative proceeding, including a proceeding relating to immigration to the United States, U.S. citizenship, or any other Immigration related matter (including alien temporary or permanent employment or travel), until Defendants are able to fully comply with the requisites of 8 C.F.R. § 292 by becoming licensed attorneys, properly supervised law students, or by becoming accredited by the U.S. Board of Immigration Appeals;
- E. Selecting or preparing immigration forms, applications, or legal documents of any type to be completed or filed on behalf of persons seeking to legalize their residency status or to obtain lawful employment in the United States, until such time as Defendants obtain the certification, license, or other qualifications required for such activity pursuant to 8 C.F.R. § 292;
- F. Advising persons, expressly or by implication, of the type of form, application or document needed in any type of proceeding relating to immigration to the U.S.,

U.S. Citizenship, employment in the U.S., or any other matter relating to the needs of alien residents or non-residents;

- G. Giving persons advice and counsel regarding their rights under the immigration laws of the United States or any other sort of legal matter, until such time as Defendants obtain the certification, license, or other qualifications required for such activity pursuant to 8 C.F.R. § 292;
- H. Soliciting, collecting, or accepting fees or compensation of any type, for providing any type of immigration or legal services to consumers, until such time as Defendants obtain the accreditation, license, or other qualifications required for such, pursuant to 8 C.F.R. § 292;
- I. Stating or implying that Defendants are attorneys licensed to practice law in this State or that Defendants have an attorney on staff to assist them with immigration related matters;
- J. Soliciting or accepting compensation of any type to obtain relief of any kind on behalf of another from any officer, agency, or employee of this state or the United States;
- K. Advertising immigration related services of any kind via the Internet, radio, TV, electronic broadcast or print (ie. newspapers, magazines, pamphlets, fliers, etc.) until Defendants have met the requisites of 8 C.F.R. § 292.

33. Because Defendants have engaged in the unlawful acts and practices described herein, Defendants have violated and continue to violate the laws as herein alleged. Defendants, unless

enjoined by this Court, will continue in violation of the laws of the State of Texas and loss and damage will result to the State of Texas and to the general public.

34. The State further prays that upon final hearing this Court order Defendants to pay civil penalties of \$20,000.00 per violation to the State of Texas for violations of the DTPA;

35. The State further prays for the Court to order Defendants to restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or in the alternative, award judgment for damages to compensate for such losses.

36. The State further prays for attorney's fees and costs pursuant to TEX GOV'T CODE ANN. §402.006(c);

37. The State further prays for pre-judgment interest on all awards of restitution, damages, and civil penalties as provided by law;

38. The State further prays that Defendants' assets be repatriated into the jurisdiction of this court, that Defendants' assets be subject to disgorgement, and that an equitable lien be placed upon Defendants' property for the benefit of consumer victims;

39. The State requests that all attached exhibits are incorporated by reference as if stated verbatim herein.

40. The State further prays for any other relief to which the State may be justly entitled under the law.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

BARRY McBEE

First Assistant Attorney General

EDWARD BURBACH
Deputy Attorney for Litigation

PAUL D. CARMONA
Chief, Consumer Protection Division

A handwritten signature in cursive script, reading "Emily B. Robinson", is written over a horizontal line.

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